



July 21, 2015

*Submitted Electronically – e-ORI@dol.gov and e-OED@dol.gov*

Office of Regulations and Interpretations  
Office of Exemption Determinations  
Employee Benefits Security Administration  
U.S. Department of Labor  
200 Constitution Ave., NW  
Washington, DC 20210

**Re: Definition of the Term “Fiduciary” (RIN 1210-AB32);  
Best Interest Contract Exemption (ZRIN 1210-ZA25)**

Ladies and Gentlemen:

We are writing to you today with respect to the Department’s proposed rule defining who is a “fiduciary” by reason of providing investment advice for a fee or other compensation (the “Conflict of Interest Rule”) and the related Best Interest Contract Exemption (the “BIC Exemption”). We appreciate the opportunity to comment on this important regulatory action.

Dividend Capital Group is a full-service investment company focused on developing and managing real estate products that build real value for investors. Dividend Capital is an innovative real estate investment management firm focused on building value through the power of real estate. Dividend Capital offers a variety of real estate investment options for individual and institutional investors.

Our primary concern relates to the Department’s definition of “Assets” in the BIC Exemption. The Department has requested comment on the proposed definition of Assets and has specifically asked that commenters who believe that additional investments should be included in the scope of the exemption provide the Department with information supporting their inclusion. Direct investment products (collectively, “Direct Investment Products”), such as non-listed Real Estate Investment Trusts (“REITs”), Business Development Companies (“BDCs”), energy and equipment leasing programs, and private equity offerings, are important investment vehicles for American investors trying to save for their retirement. None of these products have been addressed by the Department in the Rule or included in the BIC Exemption; this will have the impact of effectively making such investments unavailable to qualified IRA investors. We believe that Direct Investment Products should be included as “Assets” within the “BIC” Exemption either by the removal by the Department of a “legal list” of “Assets” or by the inclusion of Direct Investment Products on the “legal list”.

Direct investment products are distributed by highly regulated broker-dealers, who must follow rules from the SEC, FINRA and state regulators. Furthermore, most Direct Investment Products are subject to regulation at both the state and federal levels and are subject to higher disclosure

and investor qualification requirements than many other financial products. In addition, FINRA Rule 2310 imposes additional transparency requirements on broker-dealer distributed Direct Investment Products.

Most importantly though, Direct Investments Products are not only a common investment for retail investors generally, but are also a common investment for IRAs. According to information obtained from the Investment Program Association (the "IPA"):

- As of December 31, 2014, investors held more than \$84 billion of non-listed REIT and BDC shares in their accounts, according to DST Systems.
- In 2014 alone more than \$16 billion was invested in non-listed REITs and over \$5 billion invested in BDCs.
- For the year ended December 31, 2014, approximately 41% of the non-listed REIT investments were held by IRAs and approximately 48% of the BDC investments were held by IRAs.
- There are almost 3 million retail accounts invested in BDCs and non-listed REITs alone. Of these retail accounts, 43% or over 1.2 million are IRAs. Non-listed REITs and BDCs serve an important purpose in portfolios because non-listed BDCs and REITs generally do not correlate with S&P 500 returns, thus providing diversification

Finally, non-listed REITs and BDCs have favorable standard deviation rates, demonstrating that there is less volatility in their share price and performance over time, another positive attribute. There is no principled reason why an IRA investor should not be permitted to invest in non-listed REITs or BDCs, not to mention have the option to invest in other direct investment products not currently considered "Assets."

As of June 30, 2015, and excluding proceeds raised from participation in dividend reinvestment programs, Dividend Capital Securities LLC has raised approximately \$6.4 billion in capital from individual investors, approximately 40-50% of which has been raised from individual retirement accounts. Also, we are a member of the IPA which has submitted an additional comment letter of the same date hereof.

For all the reasons mentioned above, we urge the Department to revise the BIC Exemption in order to include Direct Investment Products within its scope, either by doing away with a list of specific Assets or by adding Direct Investment Products to that list. We appreciate your time and attention in ensuring that retirement investors are provided with the broadest array of investment options, while taking prudent measures to avoid conflicted advice.

**Sincerely,**



DIVIDEND CAPTIAL GROUP LLC